

**UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**CARLOS ANTONIO NAVARRO,**

**Plaintiff,**

**v.**

**JOHN DOE and SOUTHERN ILLINOIS  
MOTOR XPRESS, INC.,**

**Defendants.**

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**Civil Action 3:15-cv-00380**

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**DEFENDANTS' NOTICE OF REMOVAL  
UNDER 28 U.S.C. §§ 1332 and 1441(a) (DIVERSITY)**

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Defendants, John Doe and Southern Illinois Motor Carrier Express, Inc., hereby petition this Court pursuant to 28 U.S.C. §§ 1332 and 1446 for removal, on the basis of diversity jurisdiction, to the United States District Court for the Western District of Texas, El Paso Division, of the action styled *Carlos Antonio Navarro v. John Doe and Southern Illinois Motor Express, Inc.*, Cause No. 2015DCV3694, currently pending in the 41<sup>st</sup> Judicial District Court, of El Paso County, Texas and in support thereof would respectfully show this Court as follows:

### **Procedural Background**

1. Plaintiff filed his Original Petition on November 3, 2015, in the matter styled *Carlos Antonio Navarro v. John Doe and Southern Illinois Motor Express, Inc.*, Cause No. 2015DCV3694, currently pending in the 41<sup>st</sup> Judicial District Court, of El Paso County, Texas.

### **Nature of the Suit**

2. This lawsuit involves a claim for personal injuries. Plaintiff alleges that Defendants were negligent.

### **Basis for Removal**

3. Removal is proper under 28 U.S.C. § 1332, because there is complete diversity between the properly joined parties and the amount in controversy exceeds \$100,000.00 exclusive of interest and costs.

4. At the time Plaintiff filed his Original Petition, Defendant Southern Illinois Motor Express, Inc. had its principle place of business and was incorporated in the State of Illinois

5. At the time Plaintiff filed his Original Petition, Defendant John Doe (who is Mark Adkins, an independent owner/operator driving under dispatch through Defendant Southern Illinois Motor Express, Inc.) Mr. Adkins is a resident of the State of Arkansas.

6. Upon information and belief, Plaintiff is a resident of El Paso County, Texas.

7. The amount in controversy exceeds \$100,000.00 exclusive of interests and costs. In Plaintiff's Original, Plaintiff seeks damages in an amount in excess of \$100,000.00.

**The Removal is Procedurally Correct**

8. Plaintiff filed his Original Petition on or about November 3, 2015. Defendants filed their Original Answer on December 15, 2016. Therefore, Defendants, file this notice of removal within the 30-day time period required by 28 U.S.C. § 1446(b) and within one year after commencement of the action.

9. Venue is proper in this district under 28 U.S.C. § 1443(a), because this district and division embrace the place in which the removal action has been pending.

10. All pleadings, process, orders, and all other filings in the state court action are attached to this notice as required by 28 U.S.C. §1446(a).

11. Pursuant to 28 U.S.C. § 1446(d), promptly after Defendants file this Notice, written notice of the filing of this Notice for Removal will be given to Plaintiff, the adverse party.

12. Pursuant to 28 U.S.C. §1446(d), a true and correct copy of this Notice will be filed with the Clerk of the 41<sup>st</sup> Judicial District Court of El Paso County, Texas, promptly after Defendant files this Notice.

**WHEREFORE**, Defendants request that this action be removed from the 41<sup>st</sup> Judicial District Court of El Paso County, Texas to the United States District Court for Western District of Texas, El Paso Division, and that this Court enter such further orders as may be necessary and appropriate.

Respectfully submitted,

**FIRTH ♦ JOHNSTON ♦ BUNN ♦ KERR**

415 N. Mesa, Third Floor

P.O. Box 942 (79946)

El Paso, Texas 79901

Telephone: 915-532-7500

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[cjohnston@f-jlaw.com](mailto:cjohnston@f-jlaw.com)

By: 

CHRISTOPHER R. JOHNSTON

State Bar No. 10834200

**ATTORNEY FOR DEFENDANTS  
SOUTHERN ILLINOIS MOTOR  
EXPRESS, INC.**

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was filed on the 15 day of December, 2015, with the Clerk of the Court by using the Court's noticing system, which will send a notice of electronic filing to the following counsel of record and/or First Class U.S. Mail to:

James B. Kennedy, Jr.  
James Kennedy, P.L.L.C.  
6044 Gateway Blvd., East, Suite 715  
El Paso, Texas 79905  
(915) 544-5200  
(915) 532-2423 (Fax)  
[james@kennedyworksforyou.com](mailto:james@kennedyworksforyou.com)

A handwritten signature in black ink, appearing to read "Chris Johnston", is written over a horizontal line.

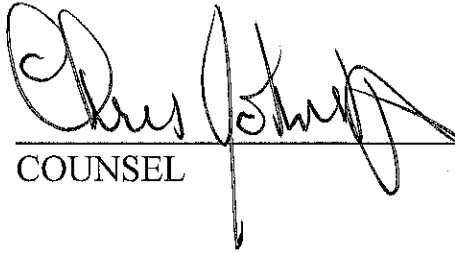
CHRISTOPHER R. JOHNSTON

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**CERTIFICATION OF COUNSEL**

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I hereby certify that the foregoing **NOTICE OF REMOVAL** has been prepared with Times New Roman, 14 point font, one of the font and point selections approved by the Court in LR 5.1.

  
COUNSEL

El Paso County - 41st District Court

Filed 11/3/2015 8:30:42 AM

Norma L. Favela  
District Clerk  
El Paso County  
2015DCV3694

IN THE \_\_\_\_\_ JUDICIAL DISTRICT COURT  
COUNTY COURT AT LAW NUMBER \_\_\_\_\_  
EL PASO COUNTY, TEXAS

CARLOS ANTONIO NAVARRO,

PLAINTIFF,

VS.

JOHN DOE AND SOUTHERN ILLINOIS MOTOR  
XPRESS, INC,

DEFENDANT.

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CAUSE NO.: \_\_\_\_\_

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**PLAINTIFF'S ORIGINAL PETITION**

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COMES NOW, CARLOS ANTONIO NAVARRO, Plaintiff in the above styled and numbered cause, by and through his attorney of record, JAMES B. KENNEDY, JR. of JAMES KENNEDY, P.L.L.C., and files this, PLAINTIFF'S ORIGINAL PETITION, and for cause of action would show the court the following:

**DISCOVERY CONTROL PLAN**

1. Discovery will be conducted under Level III pursuant to Rule §190.4 of the TEXAS RULES OF CIVIL PROCEDURE.

**PARTIES TO THIS ACTION**

2. Plaintiff resides in El Paso County, Texas.
3. Defendant Southern Illinois Motor Xpress, Inc is an Illinois corporation doing regular and systematic business in the State of Texas. Said Defendant may be served by serving its registered agent, Ronald Arbeiter at 11 N. Main Street, Perryville, MO 633775 or anywhere

they may be found.

4. Defendant John Doe is an individual who resides in the state of Texas and who may be served at 11 N. Main Street, Perryville, MO 633775 or anywhere they may be found.

#### JURISDICTION AND VENUE

5. Venue is proper in El Paso County, Texas because Plaintiff resides in El Paso County, Texas.

#### FACTS

6. On or about August 13<sup>th</sup>, 2015, John Doe negligently caused an automobile accident with Plaintiff, which resulted in severe injuries and damages to Plaintiff (hereinafter "subject accident"). The negligence of Defendant and John Doe is alleged more fully below. The subject accident was the proximate cause of the injuries and damages sustained by Plaintiff, which are set forth more fully below.

#### CAUSE OF ACTION

7. John Doe was acting within the course and scope of his employment with Defendant Southern Illinois Motor Xpress, Inc when the subject accident occurred, and as a result, Defendant Southern Illinois Motor Xpress, Inc is vicariously liable for the negligent acts and omissions of John Doe. Plaintiff invokes the doctrine of *respondeat superior*.

8. Defendant Southern Illinois Motor Xpress, Inc knowingly caused a motor vehicle to be operated by an unlicensed and unskilled driver, which violates Texas Transportation Code §521.458 and constitutes negligence which was a proximate cause of the occurrence in question.

9. John Doe proximately caused the subject accident by ways including, but not limited



to, the following when he:

- (a) Failed to use the due care and caution of an ordinary and prudent person in the same or similar circumstances;
- (b) Failed to take proper evasive action;
- (c) Failed to keep a proper look-out;
- (d) Failed to yield the right of way to Plaintiff, which constitutes negligence *per se* (V.T.C.A., Transp. Code §§ 545.152, 544.004, and 544.007); and
- (e) Committed other negligent acts and omissions to be determined during the course of discovery.

10. The above referenced acts and omissions, whether taken singularly or in concert, constitute a direct and proximate cause of the injuries and damages sustained by Plaintiff. Furthermore, this conduct violates the Transportation Code of Texas as specified above, which constitutes negligence *per se*.

#### DAMAGES

11. As a direct and proximate result of the negligent acts as described above, PLAINTIFF CARLOS ANTONIO NAVARRO suffered:

- (a) Physical pain and suffering and mental anguish, past and future;
- (b) Physical impairment and disfigurement, past and future;
- (c) Reasonable and necessary medical expenses, past and future;
- (d) Lost wages and/or loss of wage earning capacity; and
- (e) Other damages;

12. PLAINTIFF CARLOS ANTONIO NAVARRO seeks compensation in whatever amount the Jury determines to be fair and reasonable based upon the evidence, and in an amount that is within the jurisdictional limits of this Court over \$1,000,000.00.

**JURY REQUEST**

Plaintiff requests a Trial by Jury on all issues as set forth herein above.

**REQUESTS FOR DISCLOSURE**

Pursuant to Rule 194, Defendants are requested to disclose within the time period set forth in Rule 194.3 the information or material described in Rule 194.2(a)-194.2(l).

**TRCP 193.7 NOTICE**

This paragraph serves as notice under Tex. R. Civ. P. 193.7 that documents produced in response to written discovery requests served by plaintiff will be used against the producing party in any pretrial proceeding and/or trial.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that Defendant Southern Illinois Motor Xpress, Inc. and John Doe be cited to appear and answer, and that on final trial, judgment be entered against Defendants for all relief requested as follows:

1. Judgment against Defendants for actual damages in an amount that is within the jurisdictional limits of this Court over \$1,000,000.00;
2. Pre and post-judgment interest, as described by law, until paid;
3. Costs of suit;
4. Such other and further relief, general and special, at law or at equity, to which Plaintiff may be justly entitled.

Respectfully Submitted,

**JAMES KENNEDY, P.L.L.C.**  
6044 Gateway Blvd. East, Suite 715  
El Paso, Texas 79905  
(915) 544-5200  
FAX (915) 532-2423

By: /s/James B. Kennedy Jr.  
**JAMES B. KENNEDY, JR.**  
State Bar No.: 00791014

IN THE 41<sup>ST</sup> DISTRICT COURT  
EL PASO COUNTY, TEXAS

CARLOS ANTONIO NAVARRO,

Plaintiff,

v.

JOHN DOE and SOUTHERN ILLINOIS  
MOTOR EXPRESS, INC.,

Defendant.

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CAUSE NO. 2015-DCV-3694

**DEFENDANTS' ANSWER AND SPECIAL EXCEPTIONS TO  
PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants, JOHN DOE ("DOE") and SOUTHERN ILLINOIS MOTOR EXPRESS, INC. ("SOUTHERN ILLINOIS") file this their Original Answer and Special Exceptions to Plaintiff's Original Petition and for such answer would respectfully show the Court as follows:

**ANSWER**

1. Defendants DOE and SOUTH ILLINOIS deny each and every, all and singular, the allegations contained in Plaintiff's Original Petition and demand strict proof thereof.

**SPECIAL EXCEPTIONS**

2. Defendants DOE and SOUTHERN ILLINOIS specially except to paragraph 9 (e) of Plaintiff's Original Petition wherein Plaintiff alleges Defendant "*Committed other negligent acts and omissions to be determined during the course of discovery*" in that such pleading is vague and does not properly apprise Defendants of Plaintiff's claims. Such pleading should be repled or stricken.

3. Defendants DOE and SOUTHERN ILLINOIS specially except to paragraph 11(e) of Plaintiff's Original Petition wherein Plaintiff alleges "other damages" in that such pleading is vague and does not properly apprise Defendants DOE and SOUTH ILLINOIS of Plaintiff's claims. Such pleading should be repled or stricken.

WHEREFORE, PREMISES CONSIDERED, Defendants DOE and SOUTHERN ILLINOIS respectfully pray that upon final trial of this cause, Plaintiff takes nothing by his suit, that Defendants DOE and SOUTHERN ILLINOIS recover all their costs, that Plaintiff be required to replead or that his pleadings be stricken, and for such other and further relief to which Defendants DOE and SOUTHERN ILLINOIS may show themselves justly entitled.

Respectfully submitted,

**FIRTH ♦ JOHNSTON ♦ BUNN ♦ KERR**

415 N. Mesa, Third Floor

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El Paso, Texas 79901

Telephone: 915-532-7500

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By: 

CHRISTOPHER R. JOHNSTON

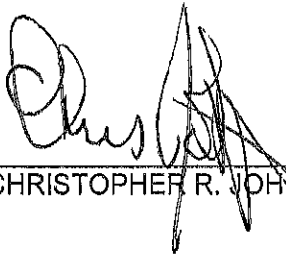
State Bar No. 10834200

**ATTORNEY FOR DEFENDANTS  
SOUTHERN ILLINOIS MOTOR EXPRESS,  
INC.**

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was filed on the 15 day of December, 2015, with the Clerk of the Court by using the Court's noticing system, which will send a notice of electronic filing to the following counsel of record and/or First Class U.S. Mail to:

James B. Kennedy, Jr.  
James Kennedy, P.L.L.C.  
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(915) 544-5200  
(915) 532-2423 (Fax)  
[james@kennedyworksforyou.com](mailto:james@kennedyworksforyou.com)

  
CHRISTOPHER R. JOHNSTON